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CAUSE NO. 91-167

IN THE

SUPREME COURT OF THE UNITED STATES

JULY TERM, 1991

B. L. PEREGOY, ET AL
PLAINTIFFS - PETITIONERS,

VS.

AMOCO PRODUCTION COMPANY
A Division of Standard Oil
of Indiana, ET AL,
DEFENDANTS - RESPONDENTS.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TEXACO INC.'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether Petitioners' claim against Texaco is barred by the doctrines of stare decisis, res judicata and collateral estoppel.

2. Whether the trial court acted within its discretionary powers in granting sanctions under F.R.C.P. Rule 11 against Petitioners and Petitioners' counsel for the filing of this lawsuit.

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Local Rule 28.2.1, the following are parties in the proceedings below in addition to those parties identified in the caption hereof:

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The following is a list of subsidiaries and/or affiliates of Texaco Inc. which have publicly-held debt or equity securities:

Texaco Capital Inc.
Texaco Capital N.V.
Texaco International Finance Corp.
Texaco Inc.
Texaco Mexicana S.A. de C.V.
Texaco Togo
Texaco Nigeria Limited
Texaco Ghana Limited
Refineria Texaco de Honduras S.A.

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OPINION SOUGHT TO BE REVIEWED

The opinion of the Texas Court of Appeals that Petitioners seek to have reviewed was reported as B.L. Peregoy v. Amoco Production, et al, 929 F.2d 196 (5th Cir. 1991).

I. STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. sect. 1291.

II. STATEMENT OF ISSUES

1. Whether the Trial Court properly granted a summary judgment dismissing Appellants' claims on stare decisis, res judicata and collateral estoppel, or on any one of these theories.

2. Whether the trial court acted within its discretionary powers in granting sanctions under F.R.C.P. 11 against Petitioners and Petitioners' counsel for the filing of this lawsuit.

III. STATEMENT OF THE CASE

A. Course of proceedings and disposition in court below:

This suit was originally filed in the United States District Court for the Eastern

District of Tennessee, Northeastern Division, on February 14, 1989.

Upon motion of the Defendants, the case was transferred to the Eastern District of Texas, Beaumont Division, and on May 18, 1989, Plaintiffs filed a petition to seek a writ of mandamus against the Tennessee district court, asking the United States Court of Appeals for the Sixth Circuit to set aside the order of transfer.

With a written opinion, the Sixth Circuit denied the petitioner's request, allowing the case to remain with the Beaumont Court. See 885 F.2d 349 (6th Cir. 1989).

After conducting a hearing at which all parties were represented on December 6, 1989, the district court on June 18, 1990 issued an order with written opinion granting summary judgments to all Defendants that the doctrines of stare decisis, res judicata, and collateral estoppel barred the Plaintiffs from any further attempts to make claims on the

Spindletop league. See 742 F.Supp. 372 (E.D. Tex. 1990).

On October 24, 1990, the district court issued a written opinion ordering sanctions against the Plaintiffs pursuant to F.R.C.P. 11.

On appeal, the United States Court of Appeals for the Fifth Circuit affirmed the judgment of the lower court. See 929 F.2d 196 (5th Cir. 1991).

B. Statement of facts:

Plaintiffs/Petitioners filed their suit in 1989 alleging that (1) Plaintiffs were the legal heirs of Pelham Humphries, (2) that Pelham Humphries was the grantee of a league of land located in Beaumont Texas (the Spindletop league), and in 1835 died while vested with title to the land, and (3) the Defendant oil companies extracted minerals rightfully belonging to the heirs of Humphries.

These claims were identical to the claims in a trilogy of cases decided over twenty years earlier by this very Court. Thus, in the present case, the Defendants filed motions to dismiss and motions for summary judgment that Plaintiffs' claims were barred by the doctrines of res judicata, stare decisis, and collateral estoppel.

In light of the history and circumstances of this litigation, summary judgments and Rule 11 sanctions were granted for Respondents and against Petitioners.

IV. SUMMARY OF ARGUMENT

It is hard to imagine a more fully litigated and decided rule of law than the central issue at the root of this present cause -- the issue of lack of ownership in the Spindletop Field by any heir of, or other claimant through, Pelham Humphries. Petitioners, who today again raise a $200 billion claim to the league of land giving

rise to the Spindletop gusher in 1901, have had their day in court, and then some, the most recent in 1968. After what can only be described as a full adjudication on the merits, the United States Court of Appeals for the Fifth Circuit -- in the strongest language, with no limitations whatever -- rejected the claims to these properties of any and all persons claiming through Pelham Humphries.

This 1968 trilogy of cases (two of which were denied certiorari by this Court) properly bars this present suit under each and every theory supporting the trial court's decision: stare decisis, res judicata and collateral estoppel. Petitioners' attack amounts to no more than a claim that this Court should not give full force and effect to its own, earlier rulings for two reasons: (1) because such decisions, involving the degree of fact determination always present in resolving title disputes, did not establish rules of law

for the property in question; and (2) that the Fifth Circuit did not, in fact, base those earlier decisions on full and adequate development of the merits. Such claims about the insufficiency of the Fifty Circuit's earlier opinions can only proceed from misreading beyond comprehension the controlling standards for decisions involving title to real property, and from outright denying that the Fifth Circuit understood the significance of the broad impact of its earlier language.

Given the circumstances and history of the claim presented in this suit, both well known to the Petitioners, the trial court had full discretion -- and properly exercised that discretion -- in ordering Rule 11 sanctions.

V. ARGUMENT

A. Petitioners' claim against Texaco is barred by the doctrines of stare decisis, res judicata and collateral estoppel.

In 1968, this very cause of action was decided by the Fifth Circuit for what it thought was the last time. In Humphries, et al v. Texas Gulf Sulphur, et al, 393 F.2d 69, 70 (5th Cir. 1968), the first of three companion cases, the court wrote that "[t]his diversity action proves that unlike old soldiers, expectant heirs never even fade away. It is one of a trilogy that hopefully will terminate the continuing battle between the heirs and the active users of the Humphries Survey." The court pointed out that all of the appellants in the Humphries case, as well as the appellants in the two companion cases, Green, et al v. Texas Gulf Sulphur Co., et al., 393 F.2d 67 (5th Cir. 1968) cert. denied 393 U.S. 977, and Beasley, et al. v. McFaddin, et al., 393 F.2d 68 (5th Cir. 1968) cert. denied 393 U.S. 842, claimed as heirs of

either "Pelham" or "William" Humphries. The court noted that while the appellees in that case and their predecessors had been in uninterrupted possession of the Spindletop Field since 1884 and had paid all the taxes, the appellants had done nothing to pursue any alleged claim to the tract:

> In stark contrast to this productive use is the absolute non-claim and inactivity by appellants for more than 125 years. Indeed, there is no evidence that appellants or their predecessors ever had possession of the land, paid any taxes, exercised any dominion over the land, or even asserted a claim to it. Nor is there any evidence to suggest that the conveyances presumed were not in fact made. All appellants have done is attempt to impeach all the known conveyances in order to prove that Pelham Humphries never parted with the land so that it descended to them. Humphries, supra at 73.

After this comment on the factual insufficiency of the evidence, the court stated sound policy reasons for its holding:

> Underpinning all these decisions is the salutary policy that courts should seek to quiet title to land...
>
> It is simply not rational to assume that more than 125 years would have passed without a claim being made to the land if

there were any substance to the claims...[This policy] also prevents time, which should heal the scars on title, from gradually undermining the title to land. Humphries, supra at 74.

Finally, the court held:

> [T]he failure of appellants and their predecessors to assert any claim to the land, to use it, or pay the taxes confirms that the original Humphries grantee, whether his name was Pelham or William, at some time in the past parted with title...The Pelham Humphries litigation is over and the Humphries heirs have no title in the league of land. Humphries, supra, at 75 [emphasis added].

Similarly, in Beasley, supra at 69, the Fifth Circuit held that "all the Humphries heirs, past, present and future, are without title." [emphasis added].

In Green, supra at 68, the court again held that "all Humphries heirs are without title and this renders a remand unnecessary." The subsequent Petition for Rehearing En Banc was denied.

Given these three holdings, each over twenty years old now (and referred to, for convenience's sake, as the "1968 Humphries Trilogy"), there can be no doubt that the

present action is a thing decided and failed to raise a claim in the trial Court because of the doctrines of stare decisis and res judicata, collateral estoppel.

1. **Stare Decisis.**

a. **This action is the same as the 1968 Humphries Trilogy.**

The issue presented in the instant case -- ownership from or through Humphries in the Spindletop league -- was squarely decided by the Fifth Circuit over twenty years ago, as evidenced by the above-quoted provisions. To reiterate the Fifth Circuit's holding, "the original Humphries grantee, whether his name was Pelham or William, at some time in the past parted with title." Humphries, supra at 75. There can be no doubt that Petitioners in the instant case are claiming through Pelham Humphries, as evidenced on Page 18 of the Petition, wherein they claim through Pelham Humphries. While Petitioners do not clearly allege or explain their theory as to how they

were harmed by the Respondents, Page 5 of the Petition alleges that Petitioners were owed a sum in excess of Two Hundred Billion ($200,000,000,000.00) Dollars due to their extraction of oil and minerals from the Spindletop Field.

Clearly, the issue of lack of ownership through Pelham (or William) Humphries was decided in the 1968 Humphries Trilogy. Both this present suit and the trilogy are based on the supposed continuing rights of Humphries' heirs to the subject league of land. This present suit and the Humphries' case, supra, involved the claim that the Humphries' heirs were entitled to profits derived from the minerals produced from the same properties. The claim to the land is the same; the land is the same; the alleged wrongful acts, whatever they are, must be the same; the case is the same. Therefore, whatever law of the case existed for the 1968 Humphries Trilogy, must also be the same for the present case.

b. **The prior decision was rendered by the superior court and states the rule of law on the issue of ownership -- or lack thereof -- by Humphries heirs to be followed by all courts.**

Putting aside their challenge on due process grounds, the Petitioners' attack upon the Trial Court's ruling essentially boils down to a single desperate claim: that the Court in the 1968 Humphries Trilogy was dealing with a title dispute and therefore, issued rulings purely of fact which are not to be given controlling effect as the rule of law. This attack ignores that judicial decisions interpreting title are always fact-laden; yet the central role of the doctrine of stare decisis has always been to uphold such title resolutions and keep them free of future litigation.

The United States Supreme Court has long recognized the strong public policy to be served by insulating judicial resolutions of title disputes from further reconsideration. See, United States v. Title Ins. Co., 265 U.S.

472, 486-87 (1924), where this Court held that "questions [affecting title to land], when once decided should be considered no longer doubtful or subject to change." See also Confederated Salish and Kootenai Tribes v. Namem, 665 F.2d 951, 960 (9th Cir.), cert. denied, 459 U.S. 977 (1982); Dunn v. Micco, 106 F. 2d 356, 359 (10th Cir.), cert. denied, 308 U.S. 620 (1939).

The decision in the Humphries Trilogy is of equal force and effect because it resolved the earlier dispute upon the Texas doctrine of presumed good title in the long standing-possessor. See Page v. Pan American Petroleum Corp., 381 S.W. 2d 949, (Tex. Civ. App.--Corpus Christi 1964, writ ref'd n.r.e.). The language the Humphries Trilogy can leave no doubt but that, the Fifty Circuit was announcing the firmest of conclusive presumptions, as a matter of law against any future challenges.

c. The Plaintiffs/Appellants are bound to the stare decisis effect of the prior ruling regardless of their participation in the earlier suit.

As pointed out by the Texas Court of Civil Appeals in Case-Pomeroy v. Pure Oil, 279 S.W.2d 886, 888 (Tex.Civ.App.--Waco, 1955 writ ref'd):

> The rule of stare decisis has reference only to questions of law; it involves no element of estoppel, and it operates upon all persons, and not merely the parties to the particular proceeding and their privies. Thus when the Supreme Court or a Court of Civil Appeals -- if the Supreme Court has denied an application for a writ of error -- has once given a definite effect to a specific writing or a particular fact situation -- as when it determines a true construction of a will or the validity of a deed...such determination is binding and conclusive in all subsequent suits involving the same subject matter, whether the parties and the property are the same or not. [Emphasis supplied].

In Case-Pomeroy, Plaintiffs were seeking royalties under a deed which had been construed as not passing a royalty interest in another case decided twenty years earlier by the Supreme Court of Texas. The Case-Pomeroy court held that even though the Plaintiffs in

that case were not the same Plaintiffs in the previous case, by doctrine of stare decisis they were nevertheless barred by the earlier decision from getting a different result. The court held that this was the case even if the Supreme Court had erred in its decision in the earlier case.

There can be no claim that the Fifth Circuit erred in its careful 1968 decisions concerning all Humphries heirs. There can be no legitimate claim that the Fifth Circuit ruled in such an unfair manner that deprived later claimants through Pelham Humphries of any due process rights. It cannot be that this Court can give, as the Appellants request, constitutional standing to Rule 19 joinder. The very standard quoted by Appellants cannot shield their claim from the effects of the earlier Humphries decisions: there is no showing whatever that unknown future claimants are Rule 19 parties.

In another case less than ninety years of recorded litigation associated with the Humphries heirs' attempts to recover the Humphries lands, the Petitioners' claims of denial of due process might ring with some sympathy. But not in this case; not with this history of endless litigation; not with the full, careful and yet forceful decision of the same issues in this case in 1968. The true benefits of due process must run to those who face the costs of such needless litigation. Freedom from constant attacks upon settled title matters must also rise to a protected position under due process considerations. The trial court and the appellate court below properly held that the earlier Humphries decision should be accorded full force as a controlling rule of law that bars all future claims through Pelham Humphries.

2. **Res Judicata.**

The doctrine of res judicata is a vibrant and significant rule of law to the U. S. Supreme Court:

> We have stressed that "[the] doctrine of res judicata is not a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts...."

Federated Department Stores, Inc. v. Moitie, 452 U.S. 394, 401 (1981) (quoting Hart Steel Co. v. Railroad Supply Co., 244 U.S. 294, 299 (1917)).

In Montana v. United States, 440 U.S. 147, 153 (1979), the Supreme Court described the doctrine of res judicata, along with the closely related doctrine of collateral estoppel:

> [A] "right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction...cannot be disputed in a subsequent suit between the same parties or their privies..." [citations omitted]...Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action... [citations

> omitted]...Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation...[citations omitted]...Applications of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions.

Applying these doctrines to the allegations contained in the Petitioners' complaint filed in the immediate cause of action, it is apparent that Petitioners are barred from raising this already litigated claim, some twenty years after its ultimate resolution.

a. <u>This action is the same as the 1968 Humphries Trilogy</u>.

As fully set out in the preceding pages, there can be no argument that this present suit was the very same action as that ruled on and decided in the 1968 <u>Humphries</u> Trilogy. The claim to the land is the same; the land is the same; the alleged wrongful acts, whatever

they are, must be the same; the case is the same.

b. The present parties were adequately represented in the 1968 Humphries Trilogy.

There is also no doubt that the parties in the instant case were represented in the prior case.

Although the prior cases simply styled the Defendants as "Texas Gulf Sulphur, et al.", (in Green), and "McFaddin, et al.", (in Beasley), Texaco was a named party to both of these suits. The lower court and the Fifth Circuit have before them the Affidavit of Ms. Pauline S. Cowart, Assistant Secretary of Texaco Inc., attached as Exhibit "A" to Texaco's Motion to Dismiss, as proof that these parties were named in the previous Beasley and Green cases. By the court's own language, it is clear that the Fifth Circuit viewed all three cases in the 1968 Humphries Trilogy as being based on common theories and being inseparably interwoven. In Green,

common a link to Pelham Humphries. Although Pelham Humphries passed away over 120 years ago, the present suit is a perfect example that some still think they have a link to Mr. Humphries' estate. It militates against human conscience to think that each and every heir could bring a suit individually claiming Spindletop proceeds without ever having their claim barred by other Humphries heirs' suits. It also militates against the law.

Res judicata bars the claims of the Plaintiffs in this action because they were parties to the earlier suit in name, through outright privity with the named parties or by virtual representation. In the traditional sense, privity stands as a bar to these Plaintiffs who are in a mutual and successive relationship to the same rights of property that the Plaintiffs in the trilogy sought to enforce. W. D. Wilson v. Henwood 337 S.W.2d 194 (Tex. Civ. App. - Amarillo, 1960, writ ref. n.r.e). More significantly, under the

federal law of res judicata, a person may be bound by a judgment even though not a party if one of the parties to the suit is so closely aligned with his interests as to be his "virtual representative." Aerojet-General Corporation v. Askew, 511 F.2d 710, 719 (5th Cir.), cert. denied and appeal dismissed sub nom., Metropolitan Dade County v. Aerojet-General Corp., 423 U.S. 908 (1975); McArthur v. Scott, 113 U.S. 340, 5 Sup.Ct. 652, 28 L Ed. 1015 (1885). Federal res judicata rules apply in a diversity case in determining the effect of a prior federal judgment. Seven Elves, Inc. v. Eskenazi, 704 F.2d 241, 244 n.2 (5th Cir. 1983); Cleckner v. Republic Van & Storage Co., 556 F.2d 766, 769 n.4 (5th Cir. 1977). In Aerojet-General, supra, a county was found to have been virtually represented by a state agency in an action that was filed by a corporation against the agency. Id. Also a federal agency was found to have been virtually represented by a

state agency action. United States v. ITT Rayonier, Inc., 627 F.2d 996 (9th Cir 1980). See also, McCrocklin v. Fowler, 285 F.Supp. 41 (E.D.Wisc. 1968), aff'd, 411 F.2d 580 (7th Cir. 1969).

The U.S. Court of Appeals for the Sixth Circuit has long applied the U.S. Supreme Court's ruling that, under the doctrine of virtual representation, the legal actions of heirs or devisees bind other, similarly situated persons. Stewart v. O'Neal, 237 F. 897 (6th Cir. 1916). In Stewart, the Sixth Circuit held that rights of a remainderman under the will in question could be fully and finally litigated in a suit concluded forty years before he was born. 237 F. at 902:

> It is true that appellee was no party to the proceeding. But it was impossible to make him a party, as he did not come into existence until 40 years afterwards....He was, however, represented in the contest by the executors and other devisees and legatees made defendants to the proceeding, whose interest was identical with his;...The case comes clearly, therefore, within the principle of virtual representation, recognized by the Supreme Court in the case of McArthur v.

Scott, 113 U.S. 340, 5 Sup.Ct. 652, 28 L.Ed. 1015; and by this court in Pugh v. Frierson, 221 Fed. 513, 137 C.C.A. 223.

The significant requirement of the doctrine of virtual representation is that the representative must have a similar or identical interest to the unrepresented persons. Benner & Co. v. Atlas Remainder, Inc., 407 F.2d 219 (6th Cir. 1969). Texaco cannot understand Appellants' claim that there is no similarity or identity of interests between the Plaintiffs in the Humphries Trilogy and Appellants in the case at hand. Both sets of Plaintiffs are claiming under the same man, Pelham Humphries, and it is only by establishing that Pelham Humphries died while still vested with title to the Spindletop Field that any Humphries heir could recover. On this point, none of them would disagree. And it is on this very point which Texaco asserts the doctrine of res judicata.

Despite Appellants' contentions that "the virtual representation doctrine is of little

supra, the court expressly relied on its other opinions:

> "..our reasoning in Humphries and Beasley confirms that all Humphries heirs are without title..."

The holding in the 1968 Humphries Trilogy certainly runs in favors this Respondent, which was a party to two of these companion cases and, therefore, all of them.

Moreover, "the bringing in of additional party Defendants in the second suit that contributed to the same alleged wrong in the first suit, does not violate the requirement for identity of the parties in the application of the doctrine of res judicata." Rosenthal v. Nevada, 514 F.Supp. 907, 912 (D.Nev. 1981). Therefore, "it is no objection that the former action included parties not joined in the present action, or vice versa, so long as the judgment was rendered on the merits, the cause of action was the same and the party against whom the doctrine is asserted was a party to the former litigation." Dreyfus v. First

National Bank of Chicago, 424 F.2d 1171, 1175 (7th Cir.) cert. denied, 400 U.S. 832 (1970). Clearly, then, Petitioners cannot hope that the adding and dropping of party Defendants since 1968 will rejuvenate their case.

Likewise, there can be no doubt that Petitioners were present in fact or as a matter of law in the previous cases. Although the Plaintiffs were simply styled in the earlier cases as "Humphries, et al.", "Beasley, et al.", and "Green, et al.", and there is no listing in the opinion of all of the other Plaintiffs in the suit, it is conceivable that the present named Petitioners were named parties in the trilogy. However, the actuality of such an occurrence is unimportant in light of the Fifth Circuit's holding in each of the trilogy opinions and all of them together. The Fifth Circuit held, as the cornerstone of its related opinions quoted above, that all heirs claiming through the Humphries estate of necessity have in

value", the doctrine is very much alive and well when correctly applied to the proper fact situation. In Klugh v. U.S., 818 F.2d 294, 300 (4th Cir. 1987), the court noted that "[t]he doctrine of virtual representation is recognized by federal and state law alike in this case." While the court pointed out that the doctrine must "cautiously be applied" in order to avoid infringement of the process, the doctrine could be applied where the Plaintiffs in that case and the Appellants in the instant are "so closely aligned in interest as to justify precluding litigation of the Plaintiffs' claim." Id.

In Jaffree v. Wallace, 837 F.2d 1461, 1467 (11th Cir. 1988), the court en route to affirming a lower court's dismissal of a Plaintiff's suit on the theory of res judicata, said "[w]e begin with a discussion of the doctrine of 'virtual representation', which supports a finding of privity 'when the respective interests are closely aligned and

the party to the prior litigation adequately represented those interests.'"

In Robinson v. National Cash Register Co., 808 F.2d 1119, 1124 (5th Cir. 1987), the court held that:

> A person may be bound by a judgment even though not a party if one of the parties to the suit is so closely aligned with his interest as to be his "virtual representative"... The question whether a party's interest are virtually representative of the interests of a non-party is one of fact for the court.

When the above cases, each one decided within the last four years, are applied to the facts of this case, it is clear that this Court has the authority to decide that Appellants were virtually represented in the Humphries Trilogy. Virtual representation is not a dead concept, but is very much alive and available for application to the proper fact situation. Such a situation is currently before this court.

Petitioners place great reliance on the Clark case to support their position that they

were not adequately (represented in the 1968 Humphries Trilogy. This is a misinterpretation of the holding in that case.

In Clark v. Amoco Production Company, 794 F.2d 967 (5th Cir. 1986), the court held, as Appellants have pointed out, that "Meadors' heirs are not successors to Clark and Profitt's interest in the estate." However, direct lineal succession to an interest in an estate is only one of three ways in which a non-party can be bound by a prior judgment of which he was not a party. As the Fifth Circuit pointed out in Clark, a non-party to litigation may be bound in three situations:

> (1) Where a non-party succeeds to a party's interest in property bound by prior judgment; (2) where the non-party controlled the previous litigation; or (3) where the non-party's interests were represented adequately in the original suit. 794 F.2d, at 973. [Emphasis added.]

Petitioners' focus on the fact that the Meadors heirs were not successors to Clark and Profitt's interests is answer only to the first of the three tests. However, the

crucial test underlying the Clark opinion is part (3): whether the non-party's "interests were represented adequately" in the original suit. In Clark, the court held that the Meadors heirs would not be bound by the prior judgment because under the facts of that case, the litigants were not adequately represented in the previous suit:

> [W]e cannot hold that these non-parties were adequately represented by two parties who proceeded pro se and failed to appeal the dismissal of their case. [Emphasis added.]

In contrast to Clark, the prior litigants in the Humphries Trilogy more than adequately represented the interests of all Humphries heirs, past, present and future. The parties to all three cases were represented by numerous counsel and did not proceed pro se. Furthermore, the Humphries Trilogy were appellate decisions. A careful reading of each decision reveals that the Fifth Circuit had before it a full record, fully examined the theories under which the various

Plaintiffs in those cases claimed, and carefully considered and deliberated over each claim. Finally, those Plaintiffs applied for, and were denied, a writ of certiorari to the Supreme Court of the United States. [See 393 U.S. 842 (1968) and 393 U.S. 977 (1968)] Now, 20 years after these three decisions were handed down, we can rely upon the Fifth Circuit, which actually reviewed a full record, heard the arguments of the parties and read the briefs written in the case; and, we can conclude the Fifth Circuit was so satisfied that the Humphries heirs were adequately represented, that the Court felt justified in holding that "all the Humphries heirs, past, present and future are without title." Beasley v. McFaddin, 393 F.2d 68 (5th Cir. 1968). [Emphasis added.]

In summary, each of the Humphries heirs clearly possess the same identity of interests as those who appeared in the earlier Spindletop suits: they are all claimants

through the same man, and can take only what Pelham Humphries himself would have had immediately prior to his death, which the Fifth Circuit has held to be nothing, since Humphries "parted with title" sometime during his life.

All Humphries heirs are without title -- this present action is a thing decided.

3. **Collateral Estoppel**.

Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits, even when those subsequent suits are based on a different cause of action involving a party to the prior litigation. See Montana v. United States, supra. If nothing else, certainly the central issues of (1) whether Pelham Humphries died without title to the land, and (2) whether the Fifth Circuit in 1968 clearly laid to rest the question of

title to the Spindletop league of land, have been decided. No challenge could possibly be made to either the competence or jurisdiction of the District Court for the Eastern District of Texas or the Fifth Circuit.

For all the reasons set out above, the determination of these central issues were made against the present Petitioners and their virtual representatives.

It is somewhat theoretical to distinguish between the doctrines of res judicata and collateral estoppel given the seamless unity between the present action and the 1968 Humphries Trilogy. Nonetheless, if for some reason it can be said that this present suit is not a thing already decided in 1968, then surely Petitioners are collaterally estopped from avoiding the Fifth Circuit's 1968 specific pronouncements that (1) their only source of title, Pelham Humphries, parted with title before his death, and (2) all heirs,

past, present and future, are concomitantly without title.

B. The trial court acted within its discretionary powers in granting sanctions under F.R.C.P. Rule 11 against Appellants and Appellants' counsel for the filing of this lawsuit.

Petitioners do not challenge the severity of the sanctions orders, but argue only that no sanction at all is warranted in this case. In fact, Petitioners concede that sanctions are warranted where res judicata bars a suit which is nevertheless filed. Given the arguments above, the conclusion is irrefutable that if ever there was a case for Rule 11 sanctions for the filing of a frivolous suit, the present case on appeal is the prime example.

VI. CONCLUSION

The trial court properly held - and the Court of Appeals properly affirmed - that the

1968 Humphries Trilogy fully laid to rest any claims by any heir of Pelham Humphries. Each of the legal doctrines of closure upon which the trial court based its decision is fully applicable to the instant case and fully bars it. The trial court was correct in granting - and the Fifth Circuit correct in affirming - summary judgment dismissing this suit. There are no reasons for this Court to re-open a case which has been re-opened and decided too many times already.

Likewise, there can be no question that Rule 11 sanctions were properly ordered in furtherance of respect for the 1968 Humphries Trilogy's earlier attempt to rid courts of this useless litigation.

Respectfully
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CERTIFICATE OF SERVICE

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